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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ANGUS PETROLEUM CORPORATION, Plaintiff and Respondent, v. MAHAFFEY & ASSOCIATES PLC, Defendant and Appellant.	G055829 (Super. Ct. No. 30-2017-00918217) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Nathan R. Scott, Judge. Affirmed.

Mahaffey Law Group and Douglas Mahaffey; Law Office of Valerie T. McGinty and Valerie T. McGinty for Defendant and Appellant.

Theodora Oringher, Jeffrey H. Reeves and Michael E. Bareket; Aviso Legal Group, Linda D. Lam and Lori Ginex-Orinion for Plaintiff and Respondent.

* * *

The last time these parties were before us, attorney Douglas Mahaffey, on behalf of his law firm, Mahaffey & Associates PLC (collectively Mahaffey) was attempting to sue former client Angus Petroleum Corporation (Angus) for a declaration stating it was legally permitted to represent another party who was now adverse to Angus. We stated that Mahaffey's decision "to subject its former client to a long, costly, and completely meritless lawsuit" was a "surpassingly bad idea." (*Mahaffey & Associates PLC v. Angus Petroleum Corporation et al*. (Aug. 27, 2013, G047654) [nonpub. opn.] (*Mahaffey I*).)[1]

Thereafter, Mahaffey claimed that Angus owed it some amount of attorney fees, and pursuant to its own fee agreement, filed for arbitration. The arbitration proceedings lasted over two years, and resulted in a final award in which Mahaffey took nothing and was ordered to pay Angus attorney fees and costs of $5,390,765. The trial court, in due course, denied Mahaffey's motion to vacate this award and granted Angus's motion to confirm it. Mahaffey then filed this appeal, claiming the arbitrator exceeded the scope of his authority, refused to rule on necessary issues, and substantially prejudiced its rights. But what Mahaffey is really arguing is simply that the arbitrator reached the wrong decision. None of the rare permissible grounds for reviewing an arbitrator's decision are present here. In short, this appeal is just as meritless as Mahaffey's last one.

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[1] Angus requests we take judicial notice of the prior opinion, the docket in a related bankruptcy case, and various documents that were submitted to the arbitrator for review (exhibits 1, 2, 3, 5 and 6). The request is granted as to these exhibits pursuant to Evidence Code sections 452 and 459. Angus also requests we take judicial notice of a Westlaw search related to Mahaffey. As Angus provides no explanation as to why we should do so, and none is apparent to us, the request for judicial notice is denied as to exhibit 4. Angus also belatedly requests to augment the record to include a 1500-page spreadsheet of "Reasons Fees and Costs Are Not Owed." As this is not necessary to decide the appeal, and was filed unreasonably late, the motion is denied. (See Advisory Com. com., 23 pt. 3 West Ann. Codes, Rules (2019 ed.) foll. rule 8.155(a), p. 488.)

I

FACTS

The underlying case has a long history, and we present the facts only in brief and as necessary to decide this appeal. Angus owned an oil production company. It also owned property in Huntington Beach known as the Springfield Unit comprising two square blocks. As the arbitrator discussed: "The ownership and management of Angus was contested through many proceedings and over a substantial period of time." In or about 2004, South Coast Oil Corporation (South Coast) purchased all of Angus's stock, and Angus became a wholly owned subsidiary of South Coast. As of mid-2007, Angus owned 50 percent of the working interest in the Springfield Unit. The other 50 percent was owned by Hunt Petroleum, which in 2008, was sold and renamed XTO Offshore, Inc. (XTO).

The Springfield Unit, the arbitrator noted, "was fraught with complex legal and regulatory issues and disputes. As of 2007, the Property was not operating and there was a pending regulatory proceeding and order to shut down the site (the 976 Order) advanced by the California State Division of Oil, Gas and Geothermal Resources ('DOGGR'). Various parties contested the ownership and related rights to the oil and profits therefrom that could potentially be produced by the Property."

In May 2007, Angus entered into an independent contractor agreement with BG Operations, LLC (BG), a company that provided oil and gas services (independent contractor agreement). BG was owned by Bob Grayson. Under the independent contractor agreement, BG was to operate the property once regulatory constraints were lifted, and advance certain costs, in exchange for which BG would receive a 25 percent interest in the income expected from future oil production.

The arbitrator found that "Grayson appointed Mahaffey to represent him and the Property and Angus in about May, 2007. This oral agreement extended to all of the legal issues then confronting the parties in connection with restoring the operation of

the Property. Grayson expected Mahaffey to keep track of his time and expenditures and intended to pay him (or have Angus pay him) when the Property was producing oil and there was cash to pay all vendors. Mahaffey also contends that other officers of Angus similarly asked Mahaffey to undertake such work, on similar terms. Mahaffey asserts that prior to the execution of the Fee Agreement he had undertaken Angus work on the basis that he keep track of his time and would be paid when Angus had the funds to do so." Further, "Grayson advanced $373,000 plus $65,000 or $438,000, to Mahaffey in a series of payments . . . . These payments are complicated by a separate attorney-client relationship between Grayson and Mahaffey concerning unrelated legal matters. Some of the payments to Mahaffey are characterized as loans and some of the 'loans' were claimed to have been repaid by Mahaffey by legal work performed by him for Grayson on his other matters unrelated to Angus or the Property."

Shortly thereafter, in June 2007, Mahaffey and Angus, by its CEO Donald W. White, entered into Mahaffey's written fee agreement. Mahaffey was hired "to handle all legal and corporate matters." Mahaffey represented Angus in numerous matters from January 2007 until May 2011.

Mahaffey's fee agreement included a binding arbitration provision, which stated that in any dispute involving $5,000 or more, "the parties hereto expressly agree to resolve any and all such disputes, including but not limited to fee disputes and claims of malpractice, fraud or negligence against Attorney of any nature, through Binding Arbitration in accordance with the rules and guidelines promulgated by Judicial Arbitration and Mediation Services, Inc. ('JAMS') or any other arbitration panel selected by Attorney. . . . The parties hereby knowingly, voluntarily and expressly waive any and all rights, including but not limited to *California Business and Professions Code § 6204*, to appeal the arbitration award or a trial de novo." The arbitration also included a nonreciprocal provision for attorney fees: "Attorneys are entitled to recover from Client

all Attorneys' fees and costs incurred by Attorney in attempting to recover all unpaid Attorneys' fees and costs."

In September 2007, South Coast was placed in an involuntary bankruptcy proceeding by a group of creditors represented by Mahaffey, including BG and White. (*Mahaffey I, supra*, G047654.)

In August 2009, Angus and Grayson signed a "modification agreement" to the independent contractor agreement. It noted that Angus was "currently engaged in various [legal] matters [concerning] XTO . . ." and its successor. The modification agreement included a provision that if any legal action was initiated in the future by Angus against XTO or DOGGR with respect to the Springfield Unit, then "Angus shall use its best efforts to agree with the Law Offices of Douglas Mahaffey that said Firm represent Angus on a mutually acceptable contingency fee basis." Mahaffey was not a party to the modification agreement, and there is no indication in the record that a separate written contingency fee agreement was entered into by Angus and Mahaffey.

Between 2007 and May 2011, the arbitrator found, "Mahaffey rendered services to Angus and Grayson on a multitude of matters, many of which required considerable expertise in oil and gas law and related regulatory proceedings as well as bankruptcy law, administrative law and general civil litigation. Mahaffey exhibited a substantial command of these matters, and these services were the competently and diligently performed . . . ." "Many of these claims were part of a Bankruptcy Court proceeding, but there was a host of related litigation then pending and later filed among a multitude of individuals and entities. The oil leases on which the Property was dependent to allow oil production had expired or their effectiveness was otherwise in legal doubt. In 2010, an oil spill at the property led to a series of investigations by various federal and state agencies; Mahaffey had a lead role in representing Angus and others in these proceedings."

It is undisputed that Angus paid Mahaffey substantial legal fees during the period in which Mahaffey was retained. In May 2011, Angus terminated Mahaffey's services. Angus was later sold. Numerous disputes existed as to what further payments for fees, if any, were due, and in April 2014, Mahaffey filed the instant demand for arbitration. Mahaffey's demand for arbitration included both contract and quasi-contract theories.

The arbitrator granted, in substantial part, Angus's motion for summary adjudication. The arbitrator concluded Mahaffey's quantum meruit claim was barred by the two-year statute of limitations, and its breach of contract claim as to any billing statement prior to April 22, 2010 was also dismissed as barred by the four-year statute of limitations.

Mahaffey then moved for leave to file an amended demand, seeking to state claims for breach of contract (both of the fee agreement and the modification agreement between Angus and BG), open book account, goods and services rendered, and breach of the covenant of good faith and fair dealing. The arbitrator decided: "The contract count is ALLOWED, subject to the limitation in the previously granted summary disposition motion. The two common counts are ALLOWED in spite of the Arbitrator's skepticism that, on the merits, they are not likely to be legally or factually sufficient. The Count based on the Modification Agreement is NOT ALLOWED as inarbitrable. . . .
There is no arbitration clause in the Modification Agreement or the agreement it purports to modify. The arbitration clause in the Fee Agreement is a broad-form clause, but it cannot be read to include arbitration of disputes arising under unrelated agreements. The breach of implied covenant claim is allowed in spite of the skepticism of the Arbitrator that, on the merits, it is not likely to be legally or factually sufficient."

The arbitration proceedings took more than two years. In 2016, the arbitrator conducted a nine-day evidentiary hearing, with more than a 1,000 exhibits and the testimony of more than a dozen witnesses in various forms. The record reflects that

Mahaffey raised new issues for the first time during the arbitration hearing, including the claim that the fee agreement was not effective and there was no agreement to arbitrate between the parties. Mahaffey did not ask for the arbitration to be dismissed, but sought to have fees awarded on various different legal theories.

On February 17, 2017, the arbitrator issued a thorough and meticulous 34-page award. The arbitrator's key conclusions on Mahaffey's claim were, in summary: 1) The matter was arbitrable; 2) the fee agreement was enforceable; 3) Mahaffey had failed to establish any affirmative claim for fees due; 4) Mahaffey failed to establish Angus breached the modification agreement; 5) Mahaffey was not entitled to one-half of the sale proceeds received by Angus; 6) there was no basis for a claim of unjust enrichment; 7) no entitlement to fees existed under an oral contract theory; 8) the arbitrator's rulings on Angus's dispositive motion were undisturbed; and 9) the evidence produced by Mahaffey in support of its claim for fees was "so unreliable, untrustworthy, inconsistent, and questionable in numerous respects that no amount damages has been proven, and the fee claim must be rejected. That conclusion is superfluous here because of the determination (above) that none of the claims asserted supports any entitlement in the first place."

The arbitrator also found that public policy and precedent dictated that the nonreciprocal attorney fees provision in the fee agreement be deemed reciprocal, and therefore Angus was entitled to attorney fees incurred during the arbitration. "The evidence establishes that more than 6,700 attorney hours were expended in defense of the arbitration and costs of more than $530,000 were incurred by [Angus's counsel] Gibson Dunn or paid directly by [Angus]." The arbitrator found these fees reasonable. "[W]hat started as a simple contractual fee dispute embroiled [Angus] in extensive discovery, numerous pleading and motion issues, material and repeated changes in the theory of recovery and extensive motion practice and lengthy merits hearings far in excess of what might have been expected for a relatively straightforward fee dispute albeit involving

more than $2 million." Mahaffey's "theories evolved and changed throughout the hearing" and its evidence consisted of "a changing array of billing and accounting records purportedly supporting the fee claim. Fourteen distinct damage amounts were offered in support of the contractual fee claim, beginning in 2010 ($1,372,324) and over the next six years in varying amounts between $1 million and $3 million, the penultimate claim submitted in the course of the hearing on July 29, 2016 in the amount of $1,880,038. The last claim . . . sought $5.5 million. Significant analysis of each of these records was necessary not only because the changing numbers (all but the first two submissions were rendered after the representation ended) but because other evidence strongly suggested that the accumulation and presentation of billing records was unreliable and inaccurate in many respects." Mahaffey's submission "of changing and inconsistent damage evidence . . . consumed many attorney and expert hours."

Further, the arbitrator continued, "Both counsel and expert recount the lengthy and changing series of events leading up to the hearing, including extensive pleadings, 14 deposition sessions, numerous motion and related hearings, production of more than 138,000 pages of documents (including 1,000 pages alone relating to the support of the open book account) and about 500 pages of correspondence between counsel on discovery and pretrial matters." In conclusion, the arbitrator found the fees charged to Angus "were and are reasonable and the work embodied in those fees was necessary to achieve the outcome reflected in this award." The rates charged were also reasonable. The arbitrator concluded Angus was entitled to an attorney fees award of $4,802,877 plus costs of $587,888.

Angus filed a petition to confirm the award. Mahaffey filed a petition to vacate. In due course, the court granted the petition to confirm and denied the petition to vacate. Mahaffey was also ordered to pay Angus $128,559 in attorney fees and costs on the petitions. In October 2017, judgment was entered against Mahaffey for $5,519,634. Mahaffey now appeals.

II

DISCUSSION

California Arbitration Statutes and Standard of Review

"The California Arbitration Act (CAA; [Code Civ. Proc.,] § 1280 et seq.) 'represents a comprehensive statutory scheme regulating private arbitration in this state.'"[2] (*Cooper v. Lavely & Singer Professional Corp.* (2014) 230 Cal.App.4th 1, 10; see *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9 (*Moncharsh*).) Under the CAA, "[t]he scope of judicial review of arbitration awards is extremely narrow because of the strong public policy in favor of arbitration and according finality to arbitration awards. [Citations.] An arbitrator's decision generally is not reviewable for errors of fact or law." (*Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21, 33; see *Moncharsh, supra*, 3 Cal.4th at pp. 11-12.)

Judicial review of an arbitration award is ordinarily limited to the statutory grounds for vacating an award under section 1286.2 or correcting an award under section 1286.6. (*Moncharsh, supra*, 3 Cal.4th at pp. 12-13; see *Sunline Transit Agency v. Amalgamated Transit Union, Local 1277* (2010) 189 Cal.App.4th 292, 302-303.)

There are, however, certain "narrow exceptions" to the general rule of arbitral finality. (*Moncharsh, supra*, 3 Cal.4th at p. 11.) Mahaffey argues that several exceptions apply here, specifically, that the arbitrator engaged in prejudicial misconduct by refusing to decide necessary issues, and that the arbitrator exceeded his powers. (§ 1286.2, subd. (a).) Mahaffey also argues the award was against public policy.

As for the relevant standard of review, "[t]o the extent the trial court made findings of fact in confirming the award, we affirm the findings if they are supported by substantial evidence. [Citation.] To the extent the trial court resolved questions of law on undisputed facts, we review the trial court's rulings de novo. [Citation.] [¶] We

[2] Subsequent statutory references are to the Code of Civil Procedure unless otherwise indicated.

apply a highly deferential standard of review to the award itself, insofar as our inquiry encompasses the arbitrator's resolution of questions of law or fact. Because the finality of arbitration awards is rooted in the parties' agreement to bypass the judicial system, ordinarily '"[t]he merits of the controversy between the parties are not subject to judicial review."'" (*Cooper v. Lavely & Singer Professional Corp.*, *supra*, 230 Cal.App.4th at pp. 11-12.)

Purported Failure to Rule on Necessary Issues

Mahaffey claims the arbitration award must be vacated because the arbitrator failed to decide three necessary issues. To start, Mahaffey overstates this obligation. An arbitrator is required to rule on each cause of action, or as one of the cases Mahaffey cites states, the arbitrator cannot fail "to find upon an issue submitted." (*M.B. Zaninovich, Inc. v. Teamster Farmworker Local Union 946* (1978) 86 Cal.App.3d 410, 415 [arbitrator failed to state amount owed].) This means an arbitrator, like a court, must decide each cause of action with decisiveness and certainty. (*Ibid.*) It does not mean, as Mahaffey seems to believe, that the arbitrator is required to address every theory or piece of evidence. In any event, the arbitrator did not fail to reach a finding on each issue submitted.

The first of these purported failures to make a finding is work Mahaffey claimed it did on the defense of an oil spill: "[T]he Arbitrator refused to rule on [Mahaffey's] claim, saying only in a footnote that it was 'unnecessary to decide this issue.'" This, simply put, is false, and takes the arbitrator's comments out of context. It was unnecessary for the arbitrator to make further findings about the oil spill defense because the arbitrator *had already decided* that "none of the claims asserted supports any entitlement" to fees. The rest of Mahaffey's argument on this point consists of rearguing the evidence the arbitrator already considered. There was no failure to decide any issue.

Next, Mahaffey claims it raised "the claim of unreimbursed costs" under the fee agreement, stating that Angus disputed only $40,000 of the $291,000 claimed in costs, but the arbitrator failed to rule on this. The arbitrator found: "Mahaffey has *no affirmative balance due from Angus under the Fee Agreement*, even fully crediting all legitimate charges and disregarding the serious discrepancies in billing practices addressed elsewhere." (Italics added.) This sentence encompasses any costs Mahaffey claimed were due under the fee agreement; accordingly, the issue was sufficiently addressed.

Finally, Mahaffey claims the arbitrator failed to rule on its theory that it had an attorney lien against Angus for work done on litigation with XTO. Because "the Award does not mention the word 'lien' anywhere," it claims, it must be reversed. As noted above, the arbitrator's statement that "no affirmative balance due from Angus under the Fee Agreement" was sufficient to address any lien. The rest of Mahaffey's argument, once again, is a review of the allegedly insufficient evidence to support the arbitrator's decision. And again, there are no grounds to review the substance of the arbitrator's decision.

Purported Violation of Public Policy

Mahaffey's next baseless argument is that "[b]ecause the Award provided zero attorney fees for work that was undisputedly necessary and successful, the Award violates California's public policy supporting the enforcement of contract."

First, we note that the incredibly limited scope of cases in which an arbitration award has been found to violate public policy. These are mostly found in federal law and the cases Mahaffey cites mostly found *no* violation of public policy. (*Eastern Associated Coal Corp. v. United Mine Workers of America, District 17* (2000) 531 U.S. 57; *Aramark Facility v. Service Employees Local 1877* (9th Cir. 2008) 530 F.3d 817.)

In *United Paperworkers Intern. Union v. Misco, Inc.* (1987) 484 U.S. 29, 32-33, the public policy at issue was the operation of dangerous machinery by a person under the influence of illegal drugs. In the only California case Mahaffey cites, the court found that an arbitration award violated public policy by requiring a party to violate an existing court-ordered injunction. (*City of Palo Alto v. Service Employees Internat. Union* (1999) 77 Cal.App.4th 327, 339-340.)

Mahaffey argues that "California has a longstanding public policy in favor of enforcing contracts," which is essentially saying that California has a public policy of following its own laws. This argument, therefore, can be summarized as the arbitrator did not follow the law, therefore the arbitration award should be judicially reviewed. Such an exception to the general rule of nonreview of arbitration awards would constitute a loophole large enough for an aircraft carrier to sally through. What Mahaffey is really arguing here, once again, is simply that the arbitrator was wrong. This is unreviewable. (*Cooper v. Lavely & Singer Professional Corp.*, *supra*, 230 Cal.App.4th at pp. 11-12.)

Mahaffey's further argument that the award violated public policy "by making two rulings that rested on contradictions" is similarly unreviewable. This is simply a way of attempting to dress up purported (and meritless) legal error as public policy.

Purported Excess of Jurisdiction

Mahaffey next claims that the arbitrator "concoct[ed] a new statute of limitations that barred half of Mahaffey's claimed fees," thereby exceeding his powers. But Mahaffey presents no evidence that the arbitrator did any such thing – Mahaffey merely disagrees how the arbitrator construed and applied the four-year statute of limitations that indisputably applies to written contracts. This is a (purported and meritless) legal error, not an act in excess of jurisdiction. Accordingly, it is unreviewable. Mahaffey's related claim that "[t]he award ratified a contradiction" is also

unreviewable for the same reason – Mahaffey simply alleges a legal error, not an excess of jurisdiction. The arbitrator unquestionably had jurisdiction to decide all issues related to the contract's validity and enforcement.

Mahaffey cites *Board of Education v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269, for the proposition that any decision by an arbitrator that is purportedly inconsistent with statutory rights is subject to judicial review. Mahaffey's out of context and utterly simplistic reading of this case is incorrect. That case concerned whether a school board could agree, through collective bargaining, to give probationary employees greater procedural protections than the statutory scheme set forth in the Education Code. The California Supreme Court ultimately held it could not, finding: "Should District's interpretation of the law prevail, we would be faced with an 'explicit legislative expression of public policy' that issues involving the reelection of probationary teachers not be subject to arbitration. [Citation.] This expression of public policy would thus conflict with the expressed legislative intent to limit private arbitration awards to statutory grounds for judicial review. Thus, rigidly insisting on arbitral finality here would be 'inconsistent with the protection of a party's [i.e., District's] statutory rights.'" (*Id.* at p. 277.) There is, obviously, no similar expressed legislative intent that issues regarding the statute of limitations in a breach of contract case should not be subject to arbitration.

III

DISPOSITION

The judgment is affirmed. Angus is entitled to its costs on appeal.

MOORE, J.

WE CONCUR:

O'LEARY, P. J.

IKOLA, J.